

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1724**

Tyler Leibfried,
Relator,

vs.

City of Duluth,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 16, 2024
Affirmed
Ede, Judge**

Department of Employment and Economic Development
File No. 45427134-6

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Considered and decided by Bjorkman, Presiding Judge; Cochran, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Relator appeals from findings of fact and a decision by an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged from his job as a police officer based on employment misconduct. Relator seeks reversal of the ULJ's decision, arguing that his actions were not employment misconduct because he did not violate respondent city's reasonable expectations and because he exercised his judgment in good faith. Alternatively, relator requests that this court remand the matter for further proceedings, pending an investigation by respondent city's use-of-force review board. We affirm.

FACTS

In 2016, relator Tyler Leibfried began employment as a full-time police officer with respondent City of Duluth. In September 2020, Leibfried responded to emergency calls about domestic abuse at an apartment building and ultimately discharged his firearm six times through a closed door, wounding a person inside. The city terminated Leibfried's employment based on the incident.

Leibfried applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) issued an initial determination of ineligibility, stating that the city discharged Leibfried because he "violated a company policy or did not follow instructions or procedure[.]" i.e., the city's use-of-force policy. DEED concluded that Leibfried's violation of his employer's policy was employee misconduct because "[t]he violation was significant and the applicant was aware, or should

have been aware, of the policy, procedure, or instructions.” Because DEED determined that Leibfried engaged in misconduct, Leibfried was ineligible to receive unemployment benefits per Minnesota Statutes section 268.095 (2022).

Leibfried appealed. The ULJ held three hearings during May and June 2022.¹ Along with Leibfried’s testimony, the ULJ heard testimony from a use-of-force expert, the city’s chief of police, and the city’s use-of-force coordinator. The ULJ later issued findings of fact and a decision, concluding that Leibfried was ineligible to receive unemployment benefits because the city had discharged for employment misconduct.

The ULJ found as follows. Duluth Police Department (DPD) has a use-of-force policy and Leibfried received regular training about the use of deadly force during his employment. During the September 2020 incident, dispatch informed Leibfried that several neighbors in an apartment building had called 911 to report that a woman was screaming. When Leibfried arrived, the woman met him at the building’s entrance and told him that her boyfriend had tried to start a fight with her in his apartment, but she had left instead. She said that she did not want to press charges, that she intended to leave once she got her belongings, and that her boyfriend was the only person remaining in the apartment.

¹ The ULJ previously held a hearing in May 2021, which resulted in a decision for Leibfried. The city filed a certiorari appeal from that decision and argued that it was entitled to a remand to DEED for a new hearing based on lack of notice. On appeal, this court concluded that, based on DEED’s agreement that the city did not receive proper notice of the May 2021 hearing, remand for a new hearing was appropriate. *See City of Duluth v. Tyler Leibfried*, No. A21-1318 (Minn. App. Feb. 7, 2022) (order). The May and June 2022 hearings stemmed from that remand.

Leibfried and his partner instructed the woman to stay by the building entrance while they went upstairs to talk to her boyfriend and to retrieve the woman's belongings from the apartment, which was located on the third floor at the end of a hallway. The apartment door, which faced the hallway, was closed. To the right of the subject door, the hallway extended at a right angle, creating an alcove with another door. Consistent with their training and for safety reasons, Leibfried and his partner tried to position themselves in places not directly in front of the subject door. Leibfried stood diagonally and to the right of the subject door, facing it from within the alcove. Leibfried's partner stood several feet away from the subject door, with his back against the doorframe of another apartment in the hallway.

Before Leibfried could knock on the door and announce his presence, the two officers heard two loud bangs that sounded like gunshots and both believed, based on the sounds, that someone had fired shots. Leibfried's partner ran back down the hallway and took cover around a corner, while Leibfried announced on his radio, "Shots fired." Leibfried drew his gun and aimed it at the apartment door, and then heard a sound of metal on metal that he believed was a gun being "racked." Leibfried fired four shots through the apartment door because he believed the person inside was armed and shooting at the officers, and he did not see a way to retreat safely at that time. Around ten seconds had passed between the moment the officers first heard the two loud bangs and when Leibfried fired the four shots.

Right after Leibfried discharged his gun through the apartment door, Leibfried heard a man yell out from inside, "Stop, stop, stop, stop, stop, stop, stop, stop, stop! Ow!"

Leibfried did not see the apartment door moving; the door remained closed and still, and there were no other bangs or gunshot sounds originating from the apartment after the initial two loud bangs. Leibfried did not announce that he was a police officer, give any verbal commands, or try to seek cover or concealment. Two seconds after the man stopped yelling—and about five to six seconds after Leibfried fired the first four shots—Leibfried discharged two more rounds into the apartment door. Right away, the man in the apartment cried out again: “No! No! Please! Stop! Can I open the door? Stop! Ow! I got shot! Open the door! Open the door! Please! Stop!”

Leibfried radioed for medical assistance and, after about five or six seconds, he ran out of the alcove and over to where his partner had taken cover. The apartment door remained closed and the man continued to scream. After other officers arrived, they spoke to the man inside the apartment, through the closed door, and confirmed that he did not have a gun and that there was no one else inside. One of the bullets Leibfried fired had hit the man in the shoulder. Despite treatment at a hospital, medical staff could not safely remove the bullet from the man’s body because of where it had lodged. Law enforcement later determined that the initial two loud bangs heard by the officers were the sounds of the man using the blunt end of a hatchet to secure the apartment door into place because it was old and would not otherwise shut. And police determined that the sound Leibfried had believed was the “racking” of a gun was actually the man inside the apartment, turning the deadbolt on the door. The man did not have a firearm in the apartment.

Although the ULJ did not conclude that Leibfried’s act of firing the first four shots constituted employment misconduct, the ULJ did conclude that Leibfried’s final two shots

“were a serious violation of the City’s reasonable expectations because they were not consistent with the use-of-force policy and were not a good-faith error in judgment.” Following the ULJ’s findings of fact and decision that the city discharged Leibfried for employment misconduct, Leibfried filed a request for reconsideration. The ULJ affirmed its decision. Leibfried then sought certiorari review in this appeal.²

DECISION

Leibfried challenges the ULJ’s determination that he is ineligible for unemployment benefits because his final two shots constituted employment misconduct.

An applicant is ineligible to receive unemployment benefits if the applicant was discharged for employment misconduct. *See* Minn. Stat. § 268.095, subd. 4(1). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” *Id.*, subd. 6(a). But, as relevant to the

² On appeal, Leibfried moved to supplement the record with an arbitration award and decision regarding a union grievance challenging his termination, to file the arbitrator’s decision under seal, and to file a supplemental brief. Leibfried argues that this court should review the ULJ’s decision in light of those arbitration proceedings, which occurred after the ULJ’s decision. By order of the special term panel, this court denied Leibfried’s motion to supplement, and the Minnesota Supreme Court likewise denied Leibfried’s subsequent petition for review of our decision to deny his motion. We note that no party has argued that the arbitration award and decision has mooted this appeal. “Absent a compelling reason, we will not reconsider a claim that we have previously rejected in the same case.” *Erickson v. State*, 842 N.W.2d 314, 320 (Minn. 2014). We therefore decline to address Leibfried’s arguments relying on information outside the record. *See* Minn. R. Civ. P. 110.01, 115.04; *see also Amdahl v. County of Fillmore*, 258 N.W.2d 869, 874 (Minn. 1977) (“Certiorari is, by its nature, a review based solely on the record.”).

issues on appeal, “good faith errors in judgment if judgment was required” are not employment misconduct. *Id.*, subd. 6(b)(6).

“The question of whether an employee engaged in conduct that disqualifies him or her from unemployment benefits is a mixed question of fact and law.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016).

“Whether the employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court views “the ULJ’s factual findings in the light most favorable to the decision” and accords “deference to the credibility determinations made by the ULJ[.]” *Id.* (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)) (other citation omitted). We “will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson*, 888 N.W.2d at 460 (quotation omitted); *see also* Minn. Stat. § 268.105, subd. 7(d)(5) (2022) (authorizing court of appeals to “reverse or modify the [ULJ’s] decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . unsupported by substantial evidence in view of the hearing record as submitted”).³

“Whether a particular act constitutes disqualifying conduct is a question of law we review de novo.” *Wilson*, 888 N.W.2d at 460. “Employment misconduct means any

³ Because “substantial evidence” is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” this court has noted that there is “no inconsistency between Minn. Stat. § 268.105, subd. 7(d)(5), and the standard articulated by the supreme court in *Wilson*.” *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018).

intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Minn. Stat. § 268.095, subd. 6(a). “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “A single incident can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer[,]” and “an employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Id.* at 806.

In maintaining that the ULJ erroneously determined that he is ineligible for unemployment benefits based on employment misconduct, Leibfried first argues that his final two shots did not violate the city’s reasonable expectations. He then contends that his final two shots were a good-faith error in judgment. Lastly, Leibfried alternatively requests that we remand the matter for further proceedings, pending an investigation by the city’s use-of-force review board. We address each argument in turn.

I. Leibfried’s final two shots violated the city’s reasonable expectations.

The ULJ found that Leibfried’s final two shots were “a serious violation of the City’s reasonable expectations because they were not consistent with the use-of-force policy,” which required Leibfried “to exercise his judgment throughout the incident” and “to reassess the situation before using more deadly force.” Moreover, the ULJ found that DPD’s expectations for Leibfried “included [that he] constantly assess[] the evolving level or nature of the threats he faced in a situation to determine whether further use of force (and what level of force, if any) was justified.” Leibfried challenges these findings, but we

conclude that his challenge is unavailing. Viewing the ULJ's factual findings in the light most favorable to the ULJ's decision and deferring to the ULJ's credibility determinations, there is substantial evidence in the record that reasonably tends to sustain the findings. And those findings establish that Leibfried engaged in employment misconduct by violating the city's reasonable expectation that he comply with DPD's use-of-force policy and training.

The salient record evidence showed as follows. The DPD's use-of-force policy is "governed by an objective reasonable[ness] standard" and states, among other things, that officers should only use deadly force "if no other options are reasonably available to address the situation"; that, "[w]hen practical, officers shall give warning before use of their firearm"; and that officers should consider, "as time and circumstances permit," "[w]hether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others." As relevant here, the policy specifies that "[u]se of deadly force is justified" if there is an "imminent" threat or risk of serious bodily injury or death to the officer or others. DPD also trained Leibfried to constantly evaluate the level of the threat he faced, moment to moment, and "to make constant assessments" before and after using deadly force.

After Leibfried fired the first four shots and the man inside the apartment began yelling, DPD's use-of-force policy and training required that Leibfried reassess the situation to determine whether an imminent threat justified any further use of deadly force. The man's cry of pain (i.e., "Ow!"), as well as the lack of any return fire or other indicia of further threat to the officers, is substantial evidence supporting the ULJ's finding that Leibfried had other options reasonably available to address the situation that would have

been consistent with the city's policy and training. The substantial evidence in the record also reasonably tends to sustain the ULJ's finding that these options included "Leibfried's announcing that he was a police officer, giving verbal commands to the man inside, ordering surrender, . . . warning the man that police would fire additional shots unless the man complied with commands[,]" and "directly ask[ing] the man whether he was hurt." Similarly, substantial evidence in the record, including evidence of the man's "expressions of injury in a volley of gunfire," reasonably tends to support the ULJ's finding that Leibfried could not have reasonably believed that the man's exclamation of pain was intended to deceive Leibfried into letting his guard down.

The testimony of the city's use-of-force coordinator that it was objectively unreasonable for Leibfried to fire two more shots after firing the initial four also reasonably tends to sustain the ULJ's findings. The coordinator testified that, based on the man's yelling after Leibfried fired the first four shots, DPD's use-of-force policy and training required that Leibfried reassess the circumstances before continuing to discharge his firearm through the closed apartment door. And the coordinator stated that, if Leibfried had properly assessed "both prior and after firing . . . his rounds," there was "nothing to . . . lead him to believe" that there was "going to be further rounds coming through the doors."

Furthermore, the ULJ found that "Leibfried intentionally shot the final two rounds." The ULJ also found that "this conduct seriously violated [Leibfried's] employer's reasonable expectation that he constantly evaluate the level of threat he faced and adjust his response accordingly[,]" as well as "seriously violated DPD policy on use of deadly force, because it was not reasonable for Leibfried to believe, based on the information he

had at the time, that those final two shots were necessary to protect himself or others from an imminent threat of death or serious bodily injury.” The ULJ supported these findings with two significant credibility determinations.

First, although Leibfried testified that, “after he fired the first four shots, he saw the apartment door move slightly, as if [the man] were trying to open the door[,]” the ULJ found that “Leibfried’s testimony on this point is unsupported by the evidence and is not credible.” This is because Leibfried failed to mention door movement in either his post-incident statement to the Bureau of Criminal Apprehension or at an initial May 2021 ULJ hearing, and because the body-worn camera video neither depicts the door moving during the relevant time nor shows any wood-splintering that would indicate someone was firing shots at the officers through the door.

Second, the ULJ found that “it is not believable that Leibfried continued to believe [that the man] was an imminent deadly threat” because, based on Leibfried’s testimony that he was trained to “shoot as many times as necessary to stop or neutralize [a] deadly threat,” Leibfried would not have stopped shooting after firing his sixth shot if he “truly believed [the man] remained an imminent deadly threat as long as [the man] was talking.” In other words, the ULJ found that “Leibfried’s testimony on this point was inconsistent with his actions and is therefore not reliable.”⁴

⁴ In his appellate brief and at oral argument, Leibfried asserts that, rather than accord deference to the credibility determination that the ULJ included in its “Reasons for Decision” section, we should accept the ULJ’s statement in its “Findings of Fact” section that “Leibfried believed the man inside still posed an imminent deadly threat and was trying to mislead officers by crying out ‘Ow!’” But, as DEED points out, the Minnesota Supreme Court has explained that, although an unemployment decision “is divided into three parts,

In sum, because we must defer to the ULJ’s credibility determinations and there is substantial evidence in the record that reasonably tends to sustain the ULJ’s findings, we will not disturb those findings. *See Skarhus*, 721 N.W.2d at 344; *Wilson*, 888 N.W.2d at 460. Based on those findings, Leibfried intentionally discharged the final two rounds without reassessing the situation, when he did not truly believe that an imminent threat remained, and when there were other options besides continued use of deadly force, including giving a warning. Applying de novo review, we conclude that Leibfried’s conduct was a serious violation of the standards of behavior the city had the right to reasonably expect of him, i.e., that he comply with DPD’s use-of-force policy and training. *See* Minn. Stat. § 268.095, subd. 6(a); *Wilson*, 888 N.W.2d at 460; *Schmidgall*, 644 N.W.2d at 804, 806.⁵

II. Leibfried’s final two shots were not a good-faith error in judgment.

Leibfried further contends that “there is no evidence to establish—and the ULJ made no findings that would support a holding—that Officer Leibfried’s alleged ‘error in

the ‘Findings of Fact,’ ‘Reasons for Decision,’ and the ‘Decision[,]’” “[t]he instrument must be considered as a whole.” *Nyberg v. R. N. Cardozo & Bro., Inc.*, 67 N.W.2d 821, 824 (Minn. 1954). Because “[i]t clearly appears from the ‘Reasons for Decision’ that all the factual questions . . . were actually considered and resolved in making the determination and arriving at the decision[,]” *id.*, we construe the ULJ’s findings of fact and decision as a whole and apply our usual deference to the ULJ’s credibility determinations that the ULJ set forth in its “Reasons for Decision” section.

⁵ *Cf. Casey v. Minn. Dep’t of Corr.*, No. A19-0304, 2019 WL 6112713, at *3 (Minn. App. Nov. 18, 2019) (affirming the ULJ’s determination that the relator was ineligible for unemployment benefits because the relator knowingly violated the Department of Corrections’ reasonable use-of-force policy) (nonprecedential opinion cited for persuasive authority, consistent with Minnesota Rule of Civil Appellate Procedure 136.01, subdivision 1(c)).

judgment’ was not made in ‘good faith.’” Leibfried maintains that “the ULJ made no findings that Officer Leibfried acted dishonestly or with the intent to defraud at the time he made the alleged error of judgment.” We are not persuaded.

As discussed above, good-faith errors in judgment, if judgment is required, are not employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(b)(6). And because the question whether an employee made a good-faith error in judgment determines whether a particular act constitutes employment misconduct, it is a question of law that we review *de novo*. *See Wilson*, 888 N.W.2d at 460.

Under DPD’s use-of-force policy and training, the only applicable circumstances under which Leibfried was allowed to use deadly force required that there be an “imminent” threat or risk of serious bodily injury or death to officers or others. But the ULJ determined, as a credibility matter, that “it is not believable that Leibfried continued to believe [that the man] was an imminent deadly threat” and that Leibfried would not have stopped shooting after the final two shots if he “truly believed [the man] remained an imminent deadly threat as long as [the man] was talking.” As a result, this was not a circumstance in which the use of deadly force was justified.

Given our requisite “deference to the credibility determinations made by the ULJ,” *Skarhus*, 721 N.W.2d at 344, the ULJ’s finding that Leibfried did not truly believe that an imminent threat remained after the first four shots compels the conclusion that Leibfried’s final two shots were not a good-faith error in judgment. This is because “no judgment was required of him.” *Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2011) (holding that, where a relator “knew that physical contact between employees was

prohibited[,]” the “employer had already made the necessary no-violence judgment” and the relator’s “duty was simply to follow the policy without having any discretion to choose otherwise”), *rev. denied* (Minn. Nov. 15, 2011). Leibfried knew DPD’s policy that he could not use deadly force unless he believed that there was an imminent threat. When Leibfried did not truly believe that an imminent threat remained, his duty was to follow that policy rather than fire the last two shots, without the discretion to choose otherwise. *See id.*

Even if we were to determine, as Leibfried urges, that these circumstances did require an exercise of judgment by Leibfried, we would still not conclude that Leibfried made a good-faith error in judgment. Although Minnesota Statutes section 268.095 does not define “good faith,” “[a]bsent statutory definitions, we often look to dictionary definitions to determine the plain meanings of words.” *Gilbertson v. Williams Dingmann, LLC*, 894 N.W.2d 148, 152 (Minn. 2017) (quotation omitted). The dictionary definition of “good faith,” as our prior nonprecedential decisions persuasively reflect, includes “[a] state of mind consisting in . . . honesty in belief or purpose” or “absence of intent to defraud.” *Black’s Law Dictionary* 836 (11th ed. 2019); *see, e.g., Nachtigall v. Marriott Int’l, Inc.*, No. A18-0339, 2018 WL 6442183, at *3 (Minn. App. Dec. 10, 2018) (citing *Black’s Law Dictionary* to define “good faith” in section 268.095, subdivision 6(b)(6)).⁶

Here, an “intent to defraud” is inapposite to the facts before us. As for the remaining definition of “good faith,” deference to the ULJ’s credibility determination that Leibfried did not truly believe that the man inside the apartment remained an imminent threat after

⁶ We cite this nonprecedential decision only as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Leibfried’s first four shots precludes the conclusion that Leibfried acted with honesty in belief or purpose in firing the last two shots. The ULJ’s other credibility determination—that Leibfried’s testimony that he saw the apartment door move after he fired the first four shots is not credible—also underscores and reinforces our conclusion that Leibfried did not make a good-faith error in judgment in firing his gun the final two times.

Based on the ULJ’s findings of fact and credibility determinations—which substantial evidence reasonably tends to sustain—Leibfried’s deliberate and knowing firing of the last two shots contradicted his knowledge of the city’s reasonable expectation of compliance with its use-of-force policy and training, and therefore constitutes employment misconduct, rather than a good-faith error in judgment. *See Schmidgall*, 644 N.W.2d at 806.

III. We decline to remand for further proceedings.

Leibfried requests that we remand the matter for further proceedings pending an investigation by the city’s use-of-force review board. Citing a DPD policy, Leibfried asserts that DPD had to convene a use-of-force review board before taking any action adverse to his employment.

“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted); *see also Peterson v. Ne. Bank-Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* in an unemployment-benefits appeal). Additionally, the supreme court has “said that the issue is not whether the employer can choose to terminate the employment relationship, but rather

‘whether, now that [the employee has been] terminated, there should be unemployment compensation, a determination which focuses on the willfulness of the [employee’s] behavior.’” *Schmidgall*, 644 N.W.2d at 806 (alteration in original) (quoting *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981)).

Under Minnesota law, the ULJ was not tasked with determining whether the city should have terminated Leibfried’s employment. Instead, the ULJ was charged only with deciding whether Leibfried engaged in conduct disqualifying him from receiving unemployment benefits under the applicable statutes. The ULJ concluded that Leibfried’s actions constituted misconduct under the Minnesota Unemployment Insurance Law. As discussed above, this determination was supported by substantial evidence and our de novo review has identified no errors of law.

We therefore decline to remand the matter for further proceedings to consider issues that were neither presented nor considered by the ULJ in the first instance and that are irrelevant to the salient issues in this appeal. *See Thiele*, 425 N.W.2d at 582; *Schmidgall*, 644 N.W.2d at 806.

Affirmed.